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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 13-693 SI
)	
Plaintiff,)	UNITED STATES' RESPONSE TO
)	DEFENDANT'S FEBRUARY 13, 2015 FILING IN
v.)	RE MOTION TO SUPPRESS
)	
ELIJAH COOPER,)	Date: February 27, 2015.
)	Time: 11:00
Defendant.)	
_____)	

I. DISCUSSION:

Mr. Balogh appears to have found only one case that holds there is a Fourth Amendment expectation of privacy in cell-site records, *Tracy v. State*, 152 So. 3d 504 (Fla. 2014).¹

In *Tracy* the police got real-time cell-site data without even giving the court specific and articulable facts and the cell-site data the police received was used to track the defendant's location. Neither is true here.

¹ Mr. Balogh claims that *In Re Application for an Order Authorizing the Release of Historical Cell-Site Information*, 2011 WL 679925 (E.D.N.Y. 2011)(Orenstein Opinion) held that getting cell-site data implicates the Fourth Amendment. What Judge Orenstein actually said was that, under the circumstances before him, the Fourth Amendment was not implicated. *Id.* at *2.

1 Balogh also cites *United States v. Martin*, 712 F. 3d 1080 (7th Cir. 2013), for the position that
2 good faith does not apply here. *Martin* involved the installation of a tracking device without a warrant.
3 Here the government got a court order for the data it received. *Martin* simply does not square with the
4 facts here.

5 II. CONCLUSION:

6 None of the law Mr. Balogh cites gets him where he wants to go. The federal cases that denied
7 the applications for cell-site data did so as a matter of statutory construction and the SCA does not
8 provide a suppression remedy. Those cases that dealt with suppression after the records were obtained
9 have all found good faith applies. And no federal case had found a Fourth Amendment expectation of
10 privacy in cell-site data. Mr. Cooper's motion must therefore be denied.

11
12 Date: February 18, 2015.

Respectfully submitted,

13 MELINDA HAAG
14 United States Attorney

15 /s/

16 BENJAMIN TOLKOFF
Assistant United States Attorney